

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 18-12058-RGS

SECURITIES AND EXCHANGE COMMISSION

v.

ROGER KNOX et al.

ORDER ON THE MOTION OF ROGER KNOX TO MODIFY  
THE COURT'S RESTRAINING ORDER TO PERMIT  
PAYMENT OF LEGAL FEES AND LITIGATION COSTS

October 17, 2018

STEARNS, D.J.

The motion will be denied. While Justice Breyer's plurality opinion in *Luis v. United States*, 136 S. Ct. 1083 (2016), holds that pretrial restraint of untainted assets needed by a criminal defendant to pay her retained lawyer violates her Sixth Amendment right to the assistance of counsel, the government in *Luis* did not contest the legitimacy of the frozen assets at issue.<sup>1</sup> I would not (at least on the present state of the pleadings), go as far as some district courts in holding that the burden rests on a defendant to establish that contested funds are untainted. But at a minimum, a

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<sup>1</sup> Although this is a civil securities enforcement action, Roger Knox is presently detained pursuant to a criminal complaint and will almost certainly be indicted. It is clear from his motion that his immediate concern is representation in the criminal matter.

defendant should fairly bear the burden of production on the matter as he is in the better position to know the innocent source of the funds, if any. This burden Knox has failed to satisfy.<sup>2</sup>

ORDER

For the foregoing reasons, the motion is DENIED without prejudice. Roger Knox will have fourteen (14) days from the date of this Order to submit competent evidence establishing a dispute of fact as to whether the funds at issue are untainted. The showing may be made *ex parte* under seal.

SO ORDERED.

/s/ Richard G. Stearns  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Sealed Exhibit A submitted by Knox does not satisfy that burden; rather as the SEC argues, it tends to suggest the opposite.